

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No. 04-80432

SETH DAVID SPANN,

Defendant.

**ORDER DENYING WITHOUT PREJUDICE
DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE**

Defendant Seth Spann moves for modification of his sentence under 18 U.S.C. § 3582. Defendant relies on *United States v. Blewett*, 719 F.3d 482 (6th Cir. 2013). According to *Blewett*, the Fair Sentencing Act applies retroactively to a defendant who received a mandatory-minimum crack sentence before the law's enactment. However, on July 11, 2013, the Sixth Circuit granted rehearing *en banc*, and *Blewett* is, therefore, no longer good law. See 6th Cir. R. 35(b) ("A decision to grant rehearing *en banc* vacates the previous opinion and judgment of the court, stays the mandate, and restores the case on the docket as a pending appeal."). The rehearing is scheduled for October 9, 2013. Accordingly,

IT IS ORDERED that Defendant's motion for modification of sentence [Dkt. # 46] is DENIED WITHOUT PREJUDICE. In the event that the *en banc* decision supports his

current position, Defendant may timely file the appropriate motion.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: August 27, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 27, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522